HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal Nos.2015 and 2022 of 2004

Writ Appeal No.2015 of 2004

Between:

Toddy Tappers Co-operative Society,
Addagutta, Hyderabad & another. … Appellants

And

State of Andhra Pradesh, represented
by its Special Chief Secretary,
Revenue (Excise-II) Department,
Hyderabad & others. … Respondents

Counsel for the Appellants : Shri K.Ramakrishna Reddi,
Senior Advocate assisted by
Shri T.Amarnath Goud.

Counsel for the Respondents : Sri A.Satya Prasad, Special
Government Pleader

Writ Appeal No.2022 of 2004

Between:

Toddy Tappers Co-operative Society,
Old Boiguda, Secunderabad. … Appellant

AND

Prohibition and Excise Inspector,
SHO, Secunderabad & others. … Respondents.

Counsel for the Appellants : Shri K.Ramakrishna Reddi,
Senior Advocate assisted by
Shri T.Amarnath Goud.

Counsel for the Respondents : Sri A.Satya Prasad, Special Government Pleader

8th March, 2006

COMMON JUDGMENT

Per G.S. Singhvi, C.J.

Whether the respondents could prevent the appellants from doing business of toddy shops without cancelling or withdrawing the licences granted to them under the Andhra Pradesh (Tapping of Trees and Toddy Shops – Special Conditions of Licence) Rules, 1969 (hereinafter described as 'the Toddy Rules') is the question of law which arises for determination in these appeals.

Toddy Tappers Co-operative Societies, Addagutta and Oil Boiguda were granted licences under the Toddy Rules for operating toddy shops in Secunderabad. This was done by the competent authority keeping in view the Excise Policy notified for the year 2003-04. After about one year, the respondents, by relying on Excise Policy declared by the State Government for the year 2004-05, which was circulated vide G.O. Ms.No.767, Revenue (Excise-II) Department, dated 29-9-2004 locked the toddy shops. The appellants challenged this action of the respondents in Writ Petition Nos.20610 and 18052 of 2004. They pleaded that in terms of the licences granted by the competent authority under the Toddy Rules, they were entitled to operate the toddy shops without any limitation of time period and as they had not violated the conditions of licence, the respondents could

not prevent them from operating toddy shop by relying on the Excise Policy notified for the year 2004-05. According to the appellants, the new Excise Policy was prospective in nature and, therefore, the same could not have been enforced qua licence issued before its enforcement.

In the counter affidavits filed on behalf of the respondents, it was pleaded that even though the licences were granted to the toddy tappers co-operative societies in accordance with the Excise Policy of 2003-04, they cannot be permitted to continue to do business in view of the Excise Policy notified for the year 2004-05, which envisages allotment of shops located within 50 km. of the availability of the trees. In the affidavits filed by him, Sri B.R.Meena, Commissioner of Prohibition and Excise, Andhra Pradesh, averred that the decision to close the toddy shops of the appellants was taken because the licence granted in their favour did not satisfy the conditions enumerated in Excise Policy of 2004-05. It was further averred that in terms of Rule 3 (1) of the Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 (hereinafter described as 'the Liquor Rules'), lease of right to sell the liquor in retail can be granted only for a period of one year and, therefore, the appellants do not have legal or vested right to continue to do business after expiry of one year's period. Yet another plea taken in the counter affidavits was that a large number of cases of violation of the conditions of licence had been noticed by the department and, therefore, it was decided to grant licence only to those societies which could locate the shop within 50 km. of the availability of the trees. According to the respondents, the State Government has got exclusive right to sell liquor and the policy notified in 2004-05 is binding on all the existing licensees.

On a consideration of the pleadings of the parties and arguments of the their counsel, the learned Single Judge held that even though the licences granted to the petitioners – appellants were valid up to the year 2007 and in some cases permanently, the revised policy framed by the

State Government was binding on the licensees and as they do not satisfy the conditions enumerated in the revised policy, the respondents did not commit any illegality by closing their shops.

Sri K.Ramakrishna Reddi, Senior Counsel appearing for the appellants argued that the licences granted to the appellants had an indefinite tenure and the same cannot be curtailed by enforcing the policy notified by the Government for the year 2004-05. He submitted that the new policy is not retrospective and, therefore, the same cannot be made applicable to the existing licences. He further submitted that licences granted by the competent authority in terms of Section 17 of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') read with Rule 3 of the Toddy Rules can be cancelled under Section 31 or withdrawn under Section 32 of the Act, but such an action can be taken only after giving notice and opportunity of hearing to the licensees and no such exercise was undertaken in the case of the appellants. Sri Reddi relied on the averments contained in paragraph 4 of affidavit dated 30-10-2004 filed by Sri B.R. Meena, Commissioner of Prohibition and Excise to show that the Government had taken a conscious decision to make the licences of toddy tappers co-operative societies permanent and argued that the right acquired by the appellants to do business according to the terms of the licences cannot be frustrated by forcibly closing their shops. In support of his argument, Sri Ramakrishna Reddi heavily relied on the judgment of the Division Bench of this Court in Writ Petition No. 6809 of 1983 – The Guntakal Toddy Tappers Co-operative Society v. Secretary, Revenue Department (T), Government of Andhra Pradesh, Hyderabad and others - & batch decided on 17-1-1984 and of the Supreme Court in **State of Andhra Pradesh v. Guntakal Toddy Tappers Co-operative Society**[1]**.**

Learned Special Government Pleader, Sri A.Satya Prasad argued that even though the licence granted to the appellants did not have any fixed tenure, the respondents did not commit any illegality by closing the toddy shops because they do not satisfy the conditions enumerated in the

Excise Policy notified for 2004-05. He relied on Rules 3 and 21 of the Liquor Rules and Form A-5 and argued that after having agreed to be bound by the orders issued by the State Government from time to time, the appellants cannot question the enforcement of Excise Policy of 2004-05 qua their licences. Learned Special Government Pleader conceded that before ordering closure of the toddy shops of the appellants, the concerned authority did not give any notice or opportunity of hearing to them, but argued that the rules of natural justice are not required to be followed while enforcing the new excise policy against the existing licences. He then argued that even if the action of the respondents to close the toddy shops is held to be vitiated due to violation of rules of natural justice, the Court should not nullify the same because in exercise of the police power, the State can put restriction on the right of the licensee to carry on business in liquor. He relied on the judgments of the Supreme Court in **Har Shankar v. Deputy Excise & Taxation Commissioner**[2] and **Khoday Distilleries Ltd. v. State of Karnataka**[3] and argued that the State which has exclusive right to deal in liquor etc. can restrain the licensee from carrying on trade and business in liquor. Learned Special Government Pleader justified the enforcement of 2004-05 Policy on the existing licences by asserting that this was necessitated because of the detection of large number of cases of toddy adulteration.

We have thoughtfully considered the respective arguments. In the order under challenge, the learned Single Judge noted that licences were granted to the appellants as per Excise Policy notified for the year 2003-04; that under the new policy notified for the year 2004-05, the department has provided for location of the shop within 50 km. from the trees so that the consumers could get free and wholesome toddy, undiluted and unadulterated; that there are no toddy trees in and around the twin cities where the shops of the appellants are located and the toddy is being brought from far off districts like Anantapur, Prakasam, Karimnagar etc. and

that there have been several cases of dilution and adulteration of toddy resulting in death of the consumers. The learned Single Judge then referred to the provisions of Section 17(1) of the Act and Rule 3 of the Liquor Rules and observed:

"A bare reading of the aforesaid Rule, the first clause contemplates grant of lease of right to sell toddy in retail by public auction, and that the lease shall ordinarily be for a period of one excise year. According to the respondents, in exercise of powers conferred under the first proviso thereto, the Government enunciates the Excise Policy by way of guidelines every year. On reading of the said first proviso, it goes to show that on a considered decision of the Commissioner with the prior approval of the Government, such grant of lease can be in any other manner. A bare reading of the first proviso, the expression "in any other manner" could only mean the processional manner in which such lese has to be granted. Clause (1) thereof contemplates the said grant by public auction. The discretion is left with the Commissioner subject to approval of the Government, to change the same into either by allotment by selection or as it may deem fit in the exigencies. Therefore, it cannot be said that the expression "in any other manner" as contemplated in the first clause would or can take any variation in regard to the period for which such lease is statutorily restricted i.e. for a period of one excise year.

Apt to note, the second proviso once again restricts that the period of licence granted to a Tappers Co-operative Society and to individual tappers under "Tree for Tappers Scheme" shall be for one year and the licence held by them shall also be renewed for one year at a time. This only supports the aforesaid observation that in exercise of powers under the first proviso, the Commissioner or the Government could not have touched the aspect of period as sought to be restricted not only in these Rules but also as contemplated in substantive provision under Section 17 of the Main Act. In the circumstances, it cannot be said that any instructions or guidelines or the police as sought to be made in exercise of powers under the first proviso, could in any way enlarge or touch in any manner the prescribed period of one year as contemplated under law. Therefore, it follows that on a reading of these aforesaid provisions, the period of licence cannot be beyond a period of one year though can be made subject to renewal for one year at a time. Extending the same, it cannot be said that even any other policy could have extended the period beyond one year. Since any such policy or guidelines are being framed every year, there could not have been any such prescription of period beyond one year in

any one year's policy. Normal life of a policy or guidelines issued in a particular year would end with that year and cannot be extended beyond the said period. Therefore, there could not have been any policy contemplating any scheme beyond one year nor there can be any such licence which can be granted beyond a period of one year unless and until the Statute is properly amended. Any such extended measures beyond period of one year, would be squarely fall within the mischief of the restrictions and ultra vires the statutory provisions. Irrespective of question whether such policy or guidelines have statutory force or not, such executive fiat in exercise of power conferred under the subordinate legislation cannot travel beyond the limits found in the Statute. Necessarily it follows that both the policy and the licences necessarily have to subsist only for a period of one year. Further, having regard to the fact that every year a new policy is being contemplated, itself would amply goes to show that there cannot be extension of earlier policy in the subsequent year. It is always open for the authorities to take into consideration various aspects and come out with valid schemes.

In **The Guntakal Toddy Tappers Co-operative Society** case 1984 (1) APLJ 50 (S.N.) (1 supra), whereunder having regard to the subsequent policy, the action taken by the authorities withdrawing the licences was under challenge, considering the same, the Division Bench of this Court held that there is no valid material in support of such action taken by the licensing authority under Section 32 of the said Act, nor there exists any cause having nexus to the object contemplated by the Act, and declared the impugned action as illegal and quashed the same holding that the petitioner would be entitled to have the benefit of the licences for the rest of the period as if they were not withdrawn. The case was carried in appeal, which has been decided in **State of Andhra Pradesh v. Guntakal Toddy Tappers Co-operative Society** case AIR 1975 SC 1676 (2 supra), upholding the decision of the Division Bench of this Court. The Apex Court held that the State Government should not have interfered with the existing licences of the tappers societies. It was also held by the Apex Court that no interest of any outsider as lessee is involved and, therefore, the decision of this Court was given effect to.

Similar such question has come up for consideration again before Division Bench of this Court in **Y.Harnath Reddy & others v. Nellore Toddy Tappers Co-operative Society** case 1990 (3) ALT 179 (D.B.). Considering the very Rule 3 with its provisos 1 and 2 and also the aforesaid decision of the Apex Court in 2 supra, it was held that withdrawal o f licence under Section 32 even during the initial licence period as reasonable. Placing reliance on the decision of the Apex Court reported in

Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala & others AIR 1972 SC 1863 wherein the Apex Court accepted as valid the withdrawal of licence within the licence period since such withdrawal was held to be based on a reasonable policy decision of the Government. The action of the authorities having regard to the subsequent policy was upheld. Thereunder, after considering the decision in State of A.P. v. Guntakal Toddy Tappers Co-operative Society (2 supra), upholding subsequent policy as valid, similar such pleas were rejected. Similar was the view taken by another Division Bench of this Court in **Toddy Tappers Co-op. Society, Kamareddy v. Excise Superintendent, Nizamabad** 1984 (2) APLJ 44 (S.N.)a, which was following the decision of the Apex Court in **Amar Chandra Chakraborty**
(7 supra) case, where this Court refused to interfere with the action of withdrawal of licences for the unexpired period.

In view of the above principles laid down, it is to be held that there could not have been any policy laying down the scheme for permanent period or any period beyond one excise year and further that licences granted are always subject to the policies laid."

In our opinion, the reasons assigned by the learned Single Judge for upholding the action of the respondents to close down the shops of the appellants are not based on a correct appreciation of the legal provisions and, therefore, the order under challenge is liable to be set aside. Section 17(1) of the Act which empowers the Government to grant exclusive privilege of manufacturing and supplying by wholesale or retail or both, Section 28(1) which provides for grant of licences in the particular formats, Section 31 which provides for cancellation or suspension of licence etc. and Section 32 which empowers the Government to withdraw the licence read as under.

> "**17**. **Grant of exclusive privilege of manufacture etc.:**
>
> (1) Subject to the provisions of Section 28 and any rules made in this behalf, the Government may, subject to such conditions as they may deem fit to impose, grant for a fixed period to any person at any place a lease or licence or both either jointly or severally for the exclusive privilege, -
>
> i) of manufacturing or of supplying by wholesale or of both;
>
> or
>
> ii) of selling by wholesale or by retail; or

iii) of manufacturing or of supplying by wholesale, or of both, and of selling by retail, any liquor or other intoxicant within any such area in the State as may be specified in the said order.

Explanation:- A lease shall not take effect until the Collector or any other competent officer has issued a licence under this Act.

(2) The Government may confer on any officer the power mentioned in sub-section (1).

31. Power to cancel or suspend licence etc.:-(1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates.

(a) if any duty or fee payable by the holder thereof is not duly paid; or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act, or

(d) if the holder thereof is convicted of any cognizable and non-bailalable offence or of any offence under the Naarcotics Drugs and Psychotropic Substances Act 1985 (Central Act 61 of 1985) or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958 or under Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489 of the Indian Penal Code or of any offence punishable under Section 112 or Section 14 of the Customs Act, 1962, irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will;

Provided that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other

licence granted or permit issued to such persons under this Act, or under the Opium Act, 1878.

(3) The holder of licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

32. Power to withdraw licence:- (1) Whenever the authority which granted any licence under this Act considers that such licence should be withdrawn for any cause other than those specified in Section 31, it may withdraw the licence on the expiration of not less than thirty days notice in writing of its intention to do so.

(2) When a licence is withdrawn under sub-section (1) or clause (e) of sub-section (1) of Section 31 part of the licence fee proportionate to the unexpired portion of the term of the licence and the deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount if any due from him to the Government."

Rule 3 of the Liquor Rules and Rule 3 of the Toddy Rules, which are relevant for deciding the issues arising in these appeals read as under:

Rule 3 of the Liquor Rules

3. Lease of right to sell liquor in retail:- (1) Subject to the provisions of these rules and also subject to payment of issue price for the Minimum Guaranteed Quantity of arrack of the shop or group of shops as part of sum under Section 23 read with Section 17 of the Act for grant of lease of right to sell arrack in retail in the case of arrack shops, and tree tax and tree owner's rent for grant of lease of right to sell toddy in retail in the case of toddy shops; besides the rental every lease of right to sell liquor shall be granted by public auction duly notified. The lease shall ordinarily be for the period of one excise year:

Provided that where the Commissioner considers it necessary to grant the lease of right to sell liquor in retail in any other manner he shall do so with the prior approval of the Government.

Provided further that the period of licence granted to Tappers Co-operative Society and to individual tappers under "Tree For Tappers Scheme" shall be for one year and the licence held by them shall also be renewed for one year at a time.

Provided also that no licence to sell arrack in retail shall be granted in any village situated in Scheduled areas, in which the

population of Scheduled Tribes is more than 50% of the total population of such village.

Provided also that no licence to sell arrack in retail shall be granted in villages in Scheduled areas having less than 50% tribal population but which are forming islands and surrounded by the villages in Scheduled Areas having more than 50% tribal population.

Explanation:- For the purpose of this rule:

(a) 'Scheduled Tribe' means any tribe or tribal community or part of or groups within a tribe or tribal community residing in Scheduled Areas and specified as such by a public notification by clause (1) of Article 342 of the Constitution of India.

(b)'Scheduled Areas' means such areas as the President of India may declare to be scheduled areas by an order under sub-para (1) of paragraph 6 in the Fifth Schedule to the Constitution of India.

(2) The Commissioner shall be, before the publication of the auction notice under Rule 4, competent to fix the number of shops to be established in an area, their location, assignment of trees for tapping, and in the case of arrack shops the Minimum Guaranteed Quantity of arrack that should be guaranteed by the successful auction purchaser to be lifted from time to time and sold in retail in the arrack shops or group of shops during the excise year and the issue price payable to he Department.

Rule 3 of the Toddy Rules

3. Application :- (1) These rules shall apply to all toddy shops.

(2) The licence for the retail sale of toddy shall be in Form TS.1.

(3) The licensee shall have right only for the retail sale of toddy in the shop."

It is also apposite to reproduce the licence for retail sale of toddy grantead to the appellant Toddy Tappers Co-operative Society, Addagutta (Writ Appeal No.2015 of 2004). The same reads as under:

"FORM T.S.I.
(See Rule 3(2)(1)

LICENCE FOR RETAIL SALE OF TODDY

Licence No.34 Date:30-01-2004.

I, T.V.Venkata Swamy, Prohibition & Excise Superintendent,

Hyderabad District, hereby authorize you, the President, Toddy Tappers Cooperative Society, PTCS, Addagutta, to establish a toddy shop of group of shops under this licence at Addagutta, Mandal: Secunderabad, District: Hyderabad for the sale of toddy for the period from 30-01-2004 in the following premises under the Andhra Pradesh Excise Act, 1968.

H.No. and locality : H.No.10-3-20/3/4&5, Addagutta, Hyderabad.

Boundaries:

North : Road

South : H.No.10-3-20/3/64

East : Small Lane

West : H.No.10-3-20/3/34 (House of Laxmaiah)

1. The licence together with the general conditions relating to the sale and special conditions applicable to toddy shops shall be displayed in a conspicuous place in the shop.
2. This licence is subject to the special and general conditions relating to the sale of intoxicants and other rules and orders which are in force and also the rules and orders if enforced after the issue of this licence from time to time.
3. The licence is subject to cancellation or suspension at will by the Commissioner of Prohibition & Excise.
4. The licensee shall not act in any manner prejudicial to the Revenue due or becoming due to the Government.
5. The licensee shall tap all the trees allotted for the shop regularly and ensure that toddy is available in that shop every day for sale. If he fails to do so, the licence is liable for cancellation.
6. The licensee shall consume at least 75% of the ration and in case of failure, Tree Tax has to be remitted proportionate to the 75% of the ration.
7. The licensee shall pay the annual rentals including TT of 75% of Ration in (12) Twelve equal instalments on monthly basis commencing from October.
8. In case of bifurcations/splitting proposed in any TCS after commencement of lease, in all such cases the decision of Functional Registrar is binding on the licensee and any non-compliance of the orders of Functional Registrars will entail suspension/cancellation of licence.
9. The licensee will abide all other instructions and directions given by the licensing authority during the course of lease year, failing which licence can be suspended/cancelled.

The licensee shall be bound to observe the provisions of the above conditions.

DETAILS OF THE SHOP/GROUP NAME OF THE SHOP PLACE

TCS ADDUGUTTA ADDAGUTTA ADDAGUTTA

SEAL Sd/- Proh. & Excise Superintendent,
Hyderabad District."

Similar licence was granted to Toddy Tappers Co-operative Society, Boiguda (Appellant in Writ Appeal No.2022 of 2004).

Paragraph 7 of the Excise Policy notified vide G.O.Ms.No.998, Revenue (Excise-II) Department, dated 1-10-2003 for the period from 1-10-2003 to 30-9-2004 is also extracted below:

> "7. The annual rental for the Toddy shops during the current policy shall include rental and Tree Tax (at 75% of ration) as applicable for the year 2002-2003, Rental and Tree Tax will be merged and collected as rental in (12) monthly instalments for Tappers Cooperative Society and Tree for Tapper as per the rates prevalent in the year 2002-2003. All existing licences and new licences shall be permanent subject to payment of rentals. In case the rentals is not paid on the due date, the licence shall stand automatically suspended."

An analysis of the statutory provisions reproduced above makes it clear that subject to the provisions of Section 28 of the Act and the Rules made in this behalf, the Government can grant licence for the exclusive privilege of manufacturing or of supplying by wholesale or retail any liquor or other intoxicant within a specified area. Section 28(1) of the Act lays down that licence shall be granted on payment of the prescribed fee and for a specified period subject to the restrictions and conditions laid down under the Rules. Section 31 empowers the competent authority to cancel the licence. Section 32 empowers the competent authority to withdraw the licence. Action under either of these sections can be taken only after complying with the rules of natural justice. Rule 3 of the Liquor Rules provides for grant of lease of right to sell arrack in retail in the case of arrack shops and tree owner's rent for grant of lease of right to sell toddy in retail in

the case of toddy shops besides lease of right to sell liquor in retail by public auction. This rule also lays down that lease shall ordinarily be for a period of one year. Under first proviso to this Rule, the Commissioner can grant lease of right to sell liquor in retail in any other manner subject to the prior approval of the Government. Second proviso to this rule lays down that the period of licence granted to tappers co-operative society and to the individual tappers under "Tree for Tappers Scheme" shall be for one year and the licence shall be renewable for one year at a time. Rule 3 of the Toddy Rules which applies to all toddy shops provide for grant of licence for retail sale of toddy in Form-TS.I.

A reading of the licence granted to the appellants shows that the same is in Form-T.S.I which is prescribed under Rule 3(2) of the Toddy Rules. Therefore, right of the appellants to carry on the business of toddy shops is required to be determined with reference to the Toddy Rules and not the Liquor Rules. Second proviso to Rule 3 (1) of the Liquor Rules does postulate grant of licence to tappers co-operative society for one year, but the same is applicable only when such licence is granted under the "Tree For Tappers Scheme". It is not the case of the respondents that the licences were granted to the appellants under the "Tree For Tappers Scheme". Therefore, even if the Excise Policy notified by the State Government for the year 2004-05 is treated as an order within the contemplation of counter-part agreement of lease of right to sell toddy in retail as prescribed in Rule 21 of the Liquor Rules, the same cannot be made basis for closing down the shops of the appellants.

If the licences granted to the appellants are read in conjunction with the Excise Policy notified for the year 2003-04, it becomes clear that the same did not have any tenure. This necessarily means that on the basis of licences granted to them under the Toddy Rules, the appellants acquired a vested right to continue to operate toddy shops subject to their fulfilling the conditions laid down under the Act and the Rules. No doubt, the licences granted to the appellants could be cancelled by the competent authority in

terms of Section 31 of the Act, but that power could be exercised only in any of the contingencies enumerated in clauses (a) to (e) of Section 31 and not otherwise. It was also open to the competent authority to withdraw the licence by invoking the provisions of Section 32 of the Act. However, the fact of the matter is that the respondents did not take action either under Section 31 or Section 32 of the Act. Instead, they forcibly closed the shops of the appellants on the pretext that they are running the shops in violation of the new Excise Policy notified for the year 2004-05. In our considered view, the new policy, which is not retrospective in character, cannot be invoked for curtailing the right of the appellants to carry on the business of sale of toddy in accordance with the licences granted under Rule 3(2) of the Toddy Rules.

The argument of the learned Special Government Pleader that closure of the toddy shops of the appellants was necessitated because of detection of large scale adulteration sounds attractive, but lacks merit. The averments contained in paragraph 6 of affidavit dated 30-10-2004 of Sri B.R.Meena, Commissioner of Prohibition and Excise, Andhra Pradesh, do give details of the cases booked during the years 2002-03 and 2003-04, but it is neither the pleaded case of the respondents nor any evidence has been produced before the Court to show that the appellants had indulged in adulteration of toddy or that they had violated the provisions of the Act and the Rules. Therefore, the bald averments contained in the affidavit of the officer concerned cannot be made basis for depriving the appellants of their legitimate right to do business of running the toddy shops in accordance with the licences granted under the Toddy Rules.

The doctrine of police power invoked by the learned Special Government Pleader is also not available to the respondents to justify their arbitrary action of closing down the toddy shops without holding enquiry and without giving reasonable opportunity to the appellants to represent their case.

Reverting to the order under challenge, we find that the learned

Single Judge committed a serious error by presuming that tenure of the licence granted to the appellants was only one year. While doing so, the learned Single Judge relied on Rule 3 of the Liquor Rules, but overlooked the fact that the tenure of one year is applicable only if the licence is granted to toddy tappers co-operative societies or individual tappers under the "Tree for Tappers Scheme" and not otherwise and, as a matter of fact, the licences were granted to the appellants under Rule 3(2) of the Toddy Rules.

Before concluding, we may mention that none of the judgments relied by the learned counsel for the parties have any direct bearing on the issue raised in these appeals. Therefore, we have refrained from dealing with the same.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside. The respondents are directed not to interfere with the right of the appellants to carry on their business of selling toddy in accordance with the licences granted by the competent authority under Rule 3(2) of the Toddy Rules. However, it is made clear that this order shall not preclude the competent authority from taking action in accordance with Section 31 of the Act if any such contingency arises or withdraw the licence by exercise power under Section 32 of the Act. At the same time, we make it clear that this observation shall not be taken as an authority for cancelling the licences granted to the appellants without any rhyme or reason.

G.S. SINGHVI, C.J.

8th March, 2006

G. BHAVANI PRASAD, J.

ARS

[1] **AIR 1985 SC 1676**

[2] **(1975) 1 SCC 737**

[3] **(1995) 1 SCC 574**